

Message Text

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ACTION EUR-25

INFO OCT-01 ISO-00 OIC-04 STR-08 AID-20 CEA-02 CIAE-00

COME-00 EB-11 EA-11 FRB-02 INR-10 IO-14 NEA-14

NSAE-00 RSC-01 OPIC-12 SP-03 TRSE-00 CIEP-02 LAB-06

SIL-01 SWF-02 OMB-01 L-03 SS-20 NSC-07 DODE-00

DOT-00 FMC-04 CG-00 COA-02 DLOS-07 DRC-01 /194 W

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DEPT PASS TREAS FOR KORP

E.O.11652: N/A

TAGS: EFIN, ETRN, OECD

SUBJECT: INVISIBLES COMMITTEE INTERIM REPORT ON UN LINER
CODE

REFS: (A) STATE 122510

(B) USOECD 14455

(C) USOECD 14559

(D) GERVERS-KORP LETTER JUNE 14

(E) C(74)122

(F) DAF/INV/74.39

1. SUMMARY: FINAL DRAFT INVISIBLES COMMITTEE (IC)
INTERIM REPORT ON UN LINER CODE IMPROVES CONSIDERABLY ON
ORIGINAL VERSION, ALTHOUGH STILL NOT FULLY ADEQUATE, AND
WILL PROVIDE BASIS FOR EXPECTED COUNCIL DISCUSSION ON
JUNE 27. INTERIM REPORT STILL CONTAINS REFERENCE TO
STUDY OF PRESENT CONFERENCE SYSTEM, BUT POSSIBILITY
EXISTS THAT MANDATE MIGHT BE CHANGED IN COUNCIL. (SEE
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PARA 8 BELOW.) END SUMMARY.

2. AS PER INSTRUCTIONS REF A, U.S. ALTERNATE IN IC CONSULTED WITH EXPERTS FROM COUNTRIES WHICH DO NOT FAVOR UN CODE (NO-VOTE COUNTRIES) IN EFFORT TO OBTAIN STRENGTHENED IC INTERIM REPORT TO COUNCIL. CLOSE COORDINATION WITH SWISS AND BRITISH EXPERTS RESULTED IN BROADLY SIMILAR PROPOSED AMENDMENTS TO DRAFT INTERIM REPORT (REF F). IN ADDITION, CONVERSATIONS WITH SWEDES, NORWEGIANS, GREEKS, AND GERMANS LED TO COMMON POSITIONS ON NEED TO CLEARLY IDENTIFY POSSIBLE AREAS OF CONFLICT AND TO RECOMMEND THAT GOVERNMENTS DEFER ACTION ON UN CONVENTION UNTIL IC STUDY COMPLETED.

3. PRIMARY CONSTRAINT ON DRAFTING POSSIBILITIES WAS STRONG DESIRE OF GREEK AMBASSADOR APOSTOLIDIS TO GET INTERIM REPORT TO COUNCIL FOR DISCUSSION BEFORE UN CONVENTION OPENS FOR SIGNING JULY 1, 1974. (REF C) GREEKS THEREFORE SOUGHT AND OBTAINED AGREEMENT OF BRITISH TO PROPOSE IN COUNCIL JUNE 18 THAT INTERIM REPORT BE ADDED TO AGENDA ON JUNE 27. SINCE FIRST PRIORITY WAS TO GET DOCUMENT PRINTED IN COUNCIL SERIES BEFORE JUNE 18, GREEKS AND BRITISH NOT DISPOSED TO INSIST ON MAJOR DRAFTING CHANGES WHICH MIGHT DELAY PROGRESS OF DOCUMENT.

4. IN THIS CONTEXT, MISSION SUBMITTED DRAFTING CHANGES TO SECRETARIAT WITH UNDERSTANDING THAT CHANGES SHOULD BE INCLUDED TO EXTENT POSSIBLE SHORT OF DISAGREEMENT WHICH WOULD REQUIRE RECIRCULATION OF DOCUMENT. WE DID NOT SEEK TO REOPEN QUESTION OF INCLUSION IN IC STUDY OF ANNEX A, NOTE 1, APPLICABILITY TO PRESENT LINER CONFERENCES (REF F, PARA 10), SINCE THIS ITEM WAS GENERALLY ACCEPTED AS LEGITIMATE SUBJECT OF STUDY AT IC MEETING JUNE 5 AND EFFORT TO EXCLUDE IT WOULD HAVE JEOPARDIZED OBJECTIVES OF STRENGTHENED REPORT AND RAPID APPROVAL.

5. SECRETARIAT (SCHLEPEGRELL) MET WITH IC BUREAU (BLOCH-LAINE AND BEAUJON) JUNE 13 AND AGREED TO STRENGTHEN REPORT IN NUMBER OF WAYS SUGGESTED BY U.S. AND OTHERS:

(A) PARA 1, REF F, WAS STRENGTHENED BY ASKING LIMITED OFFICIAL USE

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WHETHER PROVISIONS OF UN CODE ARE COMPATIBLE WITH PROVISIONS OF CURRENT INVISIBLES CODE (CIC).

(B) PARA 4 DELETED REFERENCE TO DEGREE OF ACCEPTANCE, AS REQUESTED REF A, PARA 3.

(C) PARA 8 NOT REPEAT NOT AMENDED TO INCLUDE REFERENCE TO NON-DISCRIMINATION PROVISION IN ARTICLE 9 OF CIC. HOWEVER, MENTION OF SUCH PROVISIONS WAS INCLUDED AT U.S. SUGGESTION IN PARA

12.

- (D) PARA 11 NOW HIGHLIGHTS PROBLEM OF POSSIBLE NEED FOR LEGISLATIVE ACTION, DIRECTLY INVOLVING GOVERNMENTS IN IMPLEMENTATION OF UN CONVENTION.
- (E) PARA 12 NOW INCLUDES, AT U.S. SUGGESTION, FULL TEXT OF 40-40-20 CARGO-SHARING PROVISION FROM UN CONVENTION AS WELL AS ADDITIONAL QUESTION ON WHETHER CARGO SHARING WOULD BE CONSISTENT WITH

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NON-DISCRIMINATION PROVISION OF CIC.

- (F) PARA 14 CONTAINS COMPROMISE FORMULA DESIGNED TO WARN GOVERNMENTS AGAINST PRECIPITATE ACTION ON UN CODE. FINAL SENTENCE NOW READS: "HOWEVER, GOVERNMENTS MAY WISH TO BEAR THESE PROBLEMS IN MIND WHEN CONSIDERING THE UNITED NATIONS CONVENTION." THIS FORMULA WAS PROPOSED BY SECRETARIAT IN IC JUNE 5 BUT WAS OMITTED FROM FIRST DRAFT OF INTERIM REPORT.

6. IC STUDY MANDATE: INCLUSION OF PRESENT LINER CONFERENCE SYSTEM IN IC STUDY OF UN CODE MAY WELL CAUSE DELAY IN GETTING FINAL IC REPORT TO COUNCIL. SUCCESS OF YES-VOTE COUNTRIES AT JUNE 5 MEETING IN CREATING LINK BETWEEN STATUS OF EXISTING CONFERENCES UNDER CIC AND STATUS OF UN CODE UNDER CIC (REF B, PARA 6) WILL INEVITABLY PROLONG DISCUSSION AND REQUIRE BROADER CONSULTATION WITH MTC ON TECHNICAL ISSUES. ALTHOUGH QUESTION RAISED BY FRENCH IS LEGITIMATE CONCERN OF IC AND LIMITED OFFICIAL USE

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REQUIRES IC RULING (REF B, PARA 5), IT WOULD NOT SEEM TO REQUIRE RESOLUTION PRIOR TO DECISION ON UN CODE. IF IC FINDS PRESENT CONFERENCE SYSTEM TO BE PRIVATELY CONTROLLED, RESTRICTIVE PRACTICES OF SUCH CONFERENCES WOULD NOT BE SUBJECT TO LIBERALIZATION REQUIREMENTS OF ANNEX A, NOTE 1, OF CIC. HOWEVER, ONCE HAVING DETERMINED PRIVATE NATURE OF CONFERENCES, IC WOULD NOT BE ANY CLOSER TO UNDERSTANDING POSITION OF UN CODE UNDER CIC. UN CODE WOULD STILL HAVE TO BE EXAMINED TO DETERMINE WHETHER EXTENT OF GOVERNMENT INFLUENCE WAS SUCH AS TO CHANGE PRIVATE CHARACTER OF CONFERENCES. THIS QUESTION COULD BE POSED SEPARATELY, AS IT IS INDEPENDENT OF DETERMINATION THAT EXISTING CONFERENCES ARE IN FACT PRIVATE ORGANIZATIONS.

7. IF, ON OTHER HAND, IC FOUND THAT EXISTING CONFERENCES WERE SUBJECT TO GOVERNMENT INFLUENCES AND THEREFORE SUBJECT TO NOTE 1, THIS WOULD NOT NECESSARILY DEMONSTRATE THAT UN CODE ITSELF INVOLVED GOVERNMENT INFLUENCE OVER CONFERENCES. CRITICAL QUESTION HERE ALSO IS WHETHER UN CODE PROVISIONS ON CONFERENCE MEMBERSHIP AND CARGO SHARING ARE MANDATORY AND, IF SO, WHETHER THEY ARE COMPATIBLE WITH NOTE 1 AND ARTICLE 9 OF CIC. FOR THIS REASON, PRIOR DETERMINATION OF STATUS OF EXISTING LINER CONFERENCES WOULD NOT CONTRIBUTE TO SOLUTION OF COMPATIBILITY QUESTION, AND COULD BE EXAMINED SEPARATELY AT LATER DATE.

8. MISSION HAS DISCUSSED ABOVE PROBLEM WITH UK AND SWISS, WHO ALSO NOW RECOGNIZE FALLACY IN LINKAGE ARGUMENTS PUT FORWARD BY YES-VOTE COUNTRIES. UK EXPERT (HUTCHINSON) WONDERED WHETHER COUNCIL ITSELF COULD RECOMMEND LIMITATIONS OF IC MANDATE TO UN CODE QUESTIONS. THIS POSSIBILITY WILL BE EXPLORED FURTHER.
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